

**Attachment A**  
**Penalty Methodology for**  
**Administrative Civil Liability Complaint No. R1-2025-0042**  
**Factors Considered in Developing Recommended Civil Liability**  
**In the Matter of Margarita Vizcaino Andrade**

This technical analysis provides a summary of factual and analytical evidence that support the findings in Administrative Civil Liability Complaint No. R1-2025-00xx (Complaint) and the recommended assessment of administrative civil liability in the amount of \$25,000. The Complaint alleges that Margarita Vizcaino Andrade (Respondent), failed to implement Required Actions Nos. 1 through 4 of the North Coast Regional Water Quality Control Board's (North Coast Water Board's) Cleanup and Abatement Order No. R1-2025-0016 (Cleanup and Abatement Order) for Mendocino County Assessor's Parcel Number (APN) 034-270-42-00 (the Property).

**SUMMARY OF VIOLATION**

The Complaint alleges that the Respondent violated a cleanup and abatement order issued by the North Coast Water Board by failing to implement corrective actions by April 30, 2025 as required under Required Actions Nos. 1 through 4 of the Cleanup and Abatement Order. The Respondent has been in violation of Required Actions Nos. 1 through 4 since the April 30, 2025 deadline, and remains in violation. However, the Prosecution Team proposes imposition of administrative civil liability only for the days of violation beginning June 3, 2025, through June 8, 2025, for a total of 5 days. The Prosecution Team choose June 3, 2025 as the start date because it is the date the North Coast Water Board received a signed green card receipt as confirmation of delivery of the Notice of Violation of the Cleanup and Abatement Order and the date Staff exhausted all compliance assistance tools by providing translated documents and calling the Respondent's son, Alfredo Vizcaino. The Prosecution Team choose the end date, June 8, 2025, as it is the date Staff determined to progress the case to complaint and started working on the complaint. The Prosecution Team has exercised its prosecutorial discretion in selecting June 8, 2025, as the end date for assessing liability consistent with the current North Coast Water Board's Cannabis Program Enforcement Strategy, which proposes staff to issue penalties much earlier in the progressive enforcement process.

Water Code section 13350, subdivision (e)(1), provides that the North Coast Water Board may impose civil liability administratively in response to violations of Board-issued cleanup and abatement orders in an amount of up to five thousand dollars (\$5,000) per day of violation. **As described below, the Prosecution Team recommends a total administrative civil liability in the full statutory maximum amount of \$25,000.**

## **PENALTY METHODOLOGY**

The State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy*<sup>1</sup> ("Enforcement Policy") establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under Water Code section 13327 and/or 13385, subdivision (e), depending on the violations. As the violation alleged in the Complaint is enforceable under Water Code section 13350, the proposed liability must take into consideration the factors specified in Water Code section 13327, specifically:

"the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

Each factor of the Enforcement Policy's ten-step approach is discussed below, along with the basis for assessing the corresponding scores and proposed administrative civil liability amount.

The violation alleged in the Complaint and assessed herein involves failure to implement corrective actions required under Required Actions No. 1 through 4 of the North Coast Water Board's Cleanup and Abatement Order No. R1-2025-0016 (Cleanup and Abatement Order). This violation is a "non-discharge violation" for purposes of the Enforcement Policy penalty methodology.

### **Step 1. Actual Harm or Potential for Harm for Discharge Violations**

Enforcement Policy Step 1 is only applicable to discharge violations, which are not alleged in the Complaint.

### **Step 2. Per Gallon and Per Day Assessments for Discharge**

Enforcement Policy Step 2 is only applicable to discharge violations, which are not alleged in the Complaint.

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<sup>1</sup> The Prosecution Team applied the 2024 Water Quality Enforcement Policy, which was approved by the Office of Administrative Law and went into effect on November 7, 2024, prior to the violations alleged in the Complaint and discussed herein. A copy of the 2024 [Water Quality Enforcement Policy](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf) can be found at: (https://www.waterboards.ca.gov/water\_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf).

### **Step 3. Per Day Assessment for Non-Discharge Violations**

The Enforcement Policy provides that “[t]he Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. This violation involves failure to implement corrective actions required under the Cleanup and Abatement Order. While all non-discharge violations harm or undermine the Water Boards’ regulatory programs and compromise the Water Boards’ ability to perform their statutory and regulatory functions, some non-discharge violations have the potential to directly or indirectly impact beneficial uses and should result in more serious consequences.”

To determine the initial liability factor for each violation, the Water Boards use the matrix set forth in Table 3 of the Enforcement Policy to determine a per-day assessment factor for each violation. The matrix considers the potential for harm resulting from the violation, and the deviation from the applicable requirement. Each of these can be “Minor,” “Moderate,” or “Major.”

#### **Potential for Harm:**

The Potential for Harm categories are as follows:

- *Minor – The characteristics of the violation have little or no potential to impair the Water Boards’ ability to perform their statutory and/or regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.*
- *Moderate – The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and/or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.*
- *Major – The characteristics of the violation have wholly impaired the Water Boards’ ability to perform their statutory and/or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major. (emphasis added.)*

(Enforcement Policy, page 21-22.)

Implementation of Required Actions 1 through 4 under the Cleanup and Abatement Order is necessary to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, take other necessary remedial actions. By

failing to implement the corrective actions, the Respondent wholly impaired the North Coast Water Board's ability to perform its regulatory functions.

Additionally, the waterbodies intended to be protected through the implementation of corrective actions are impaired. The Cleanup and Abatement Order was issued as a result of discharges and threatened discharges of waste to tributaries of the Middle Fork Eel River. The federal Clean Water Act section 303, subdivision (d), impaired waterbodies list identifies the Middle Fork Eel River as impaired due to elevated sedimentation/Siltation and elevated temperature. The U.S. Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Fork Eel River in December 2003. The TMDLs indicate that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. As such, protection of this beneficial use is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation.

In accordance with the Enforcement Policy, "non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major [Potential for Harm]." Since this non-discharge violation involves failure to comply with a directive in the Cleanup and Abatement Order to implement remedial actions impacting an impaired waterbody, the Potential for Harm for Violation 1 is **Major**.

**Deviation from Requirement:**

The Deviation from Requirement categories are as follows:

- *Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).*
- *Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).*
- *Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).*

(Enforcement Policy, page 22.)

The failure to implement corrective actions required by the Cleanup and Abatement Order is **Major**. Although the Respondent's representative has claimed that the corrective actions have been implemented, they have failed to provide proof of completion of the corrective actions despite repeated requests by North Coast Water Board Staff, rendering the requirement ineffective in its essential functions.

**Per Day Factors:**

Utilizing a Potential for Harm score of **Major** and Deviation from Requirement score of **Major**, Staff selected a Per Day Factor of 0.85, consistent with the midpoint of the range listed in Table 3 on page 21 of Enforcement Policy.

**Multiple-Day Violations**

The Enforcement Policy's Multiple-Day Violations factor applies only to violations lasting more than 30 days. Here, the Complaint seeks administrative civil liability for only 5 days of violation. As such, the Multiple-Day collapsing factor is not applicable.

**Initial Liability Amounts:**

The initial liability amount is ***calculated on a per-day basis as follows:***

Per-Day Liability (5 (days of violation) x 0.85 (per day factor) x \$5,000 (statutory maximum per day liability)) = **\$21,250**

**Step 4. Adjustment Factors**

Under this step, the initial liability amount is adjusted by factors addressing the violator's conduct.

**Violator's Conduct:**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

**Culpability:**

This factor assesses a violator's degree of culpability prior to the violation. The Enforcement Policy provides that "[h]igher liabilities should result from intentional or negligent violations" as opposed to accidental violations.

A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence, a lower multiplier for more simple negligence, and a neutral assessment of 1.0 where a violator is determined to have acted as a reasonable and prudent person would have. (Enforcement Policy, page 24.)

At the time of the inspection, the Respondent was conducting unlicensed commercial cannabis cultivation and related activities on the Property. Staff left a Field Notice of Water Quality Violations at the property. The Respondent's son Alfredo Vizcaino left a voicemail indicating receipt of this notice. Staff transmitted a Notice of Violation and Report of the October 30, 2024, inspection of the Property and enclosures of a draft Cleanup and Abatement Order for comment and Spanish translations of these documents on February 21, 2025. Staff did not receive any comments on the draft. On March 28, 2025, the North Coast Water Board's Executive Officer issued the Final Cleanup and Abatement Order to ensure the Property was adequately remediated. Staff

received confirmation of receipt of the Order via a signed green card receipt. Respondent was therefore aware of the Cleanup and Abatement Order's requirements. Although Respondent's son, Alfred Vizcaino, stated that the corrective actions had been implemented, Staff has received no evidence of such implementation despite repeated requests to Mr. Vizcaino. Staff issued a Notice of Violation for violation of the Cleanup and Abatement Order. Staff has still not received confirmation of implementation of corrective actions. Based on the totality of the circumstances, Staff alleges that Respondent has not complied with the corrective actions in the Cleanup and Abatement Order. A reasonable and prudent person would have made efforts to comply with the Cleanup and Abatement Order. The Respondent's conduct falls below that of a reasonable and prudent person. The Respondent's failure to implement the corrective actions despite knowledge of the requirement constitutes an intentional violation of the Cleanup and Abatement Order; thus, a value of **1.25** is appropriate for this violation.

### ***History of Violations:***

The Enforcement Policy advises that "[w]here the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1." (Enforcement Policy, page 24.)

There are no previous orders assessing administrative civil liability against the Respondent for previous violations within the last five years. Accordingly, a neutral factor of **1.0** is selected for Violations 1.

### ***Cleanup and Cooperation:***

This factor assesses voluntary efforts to clean up and/or to cooperate with regulatory agencies in returning to compliance after the violation. The Enforcement Policy states that the cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a "lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not." A reasonable and prudent response to a discharge violation or timely response to a North Coast Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. (Enforcement Policy, page 24.)

This violation alleges non-compliance with requirements set forth in the Cleanup and Abatement Order. As such, the relevant considerations for this factor are the Respondent's cooperation with North Coast Water Board Staff and the actions, if any, taken by the Respondent to comply with the Cleanup and Abatement Order. After the April 30, 2025, deadline to submit confirmation of implementation of corrective actions, Staff communicated with Alfredo Vizcaino via phone calls and emails to check status of the Required Actions Nos. 1 through 4 and to request c. Alfredo notified staff that his mother had completed all the required actions under the Cleanup Order and submitted information to Mendocino County. Staff indicated that the Respondent should also submit these documents to the North Coast Water Board. Staff has determined that

Mendocino County has not received the information allegedly submitted by Mr. Vizcaino. On May 27, 2025, Staff transmitted a Notice of Violation to the Respondent by email and via a certified mail, which reiterated her continued violation of Required Actions Nos. 1 through 4 for failure to implement corrective actions. Staff received a signed green card receipt on June 3, 2025 of the mail that was sent to the Fairbank Ln address, but the mail sent to her PO Box address was refused. On August 1, 2025, Staff emailed Mr. Vizcaino and requested confirmation of implementation of required actions under the Order and his consent to inspect the property. Staff also asked Mr. Vizcaino to provide contact address for his mother. On August 14, 2025, Mr. Vizcaino submitted three photos as confirmation of implementation of corrective actions. On the same day on August 14, 2025, Staff responded indicating that these photos do not address all the required actions as they are only showing one spot of the property. Mr. Vizcaino responded on the same day indicating he will submit more photos. On August 26, 2025, Staff sent a reminder email to Mr. Vizcaino to submit additional photos or provide his consent for a site inspection. On September 2, 2025, staff sent a letter to Ms. Andrade requesting her consent for an inspection and confirmation of implementation of corrective actions. Staff has not received any response. Staff has no evidence to suggest that the Respondent has complied with the Cleanup and Abatement Order. Based on the Respondent's failure to comply with the Cleanup and Abatement Order, a score of **1.25** has been assessed for the Violation.

#### **Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by adding the amounts above for each violation, including any adjustment for multiple day violations. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

The Total Base Liability amount for the Violation is calculated on a per-day basis as follows:

**\$21,250** (Initial Liability) x 1.25 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.25 (Cleanup and Cooperation Factor) = **\$33,203.125**. This total Base Liability amount exceeds the Maximum Liability Amount of **\$25,000**.

**Total Base Liability Amount: \$33,203.125**

#### **Step 6. Economic Benefit**

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than any economic benefit realized by the Respondent. Economic Benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.

For **Violation 1**, the cost of implementing the corrective actions (i.e., field inspection and report preparation) is estimated to be comparable to the cost of preparing a Site Closure Report, as presented in the State Water Board's October 2017 Direct Cost

Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)<sup>2</sup>, which is estimated to cost between \$1,080 and \$4,760.

Using the EPA BEN model, Staff determined the economic benefit from delayed expenditures associated with Violation 1. Staff identified the midpoint in the estimated range of plan costs to be \$2,920. To consider the inflation between October 2017, issuance of the Cannabis Policy Cost Analysis, and March 28, 2025, issuance of the Cleanup and Abatement Order, Staff used U.S. Bureau of Labor Statistics' CPI Inflation Calculator<sup>3</sup>, and calculated the cost of submitting the Completion Report of Winterization to be \$3,818.48. Staff entered this amount into the EPA BEN model as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring costs with a noncompliance date of the April 30, 2025 deadline, and an estimated compliance date of December 20, 2025, two weeks after the anticipated hearing date. The resulting economic benefit from delaying submittal of photographic confirmation of implementation of expenditure is \$118. The economic benefit plus ten percent for Violation 1 is calculated to be \$129.80 (\$118 + \$11.80), which the Total Base Liability Amount for this violation exceeds.

### **Step 7. Other Factors as Justice May Require**

The Enforcement Policy states that “[i]f the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for ‘other factors as justice may require,’ but only if express findings are made to justify this adjustment.” Additionally, the North Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in the total administrative civil liability. (Enforcement Policy, page 27.)

### **Staff Costs**

The North Coast Water Board incurred \$6,186 in staff costs associated with this enforcement action. This amount reflects 45.25 hours of staff time associated with investigation of the violations and preparation of the Complaint. Staff labor included the work of an Engineering Geologist, Senior Environmental Scientist, Senior Water Resources Control Engineer, Supervising Water Resources Control Engineer, and Assistant Executive Officer. Although the Prosecution Team has calculated its staff costs for this action, the Prosecution Team did not assess these costs against the Respondent. This decision was reached after consideration of the Total Base Liability Amount for this violation already exceeds the statutory maximum liability amount and will need to be adjusted under Step 9.

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<sup>2</sup> [The 2017 Direct Cost Analysis](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf) is available at: (https://www.waterboards.ca.gov/water\_issues/programs/cannabis/docs/policy/20171017\_cannabis\_cultivation\_policy\_cost\_analysis.pdf)

<sup>3</sup> U.S. Bureau of Labor Statistics' CPI Inflation Calculator ([CPI Inflation Calculator](#))



### **Step 8. Ability to Pay and Continue in Business**

The Enforcement Policy provides that “[i]f the Water Boards have sufficient financial information necessary to assess the violator’s ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator’s ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The ability of a responsible party to pay is determined by its income (revenues minus expenses) and net worth (assets minus liabilities).” (Enforcement Policy, pages 28-29.)

Mendocino County Tax Assessor Records in Lightbox Vision indicate that the Respondent solely owns four properties, including the property subject to this complaint, in Mendocino County (APNs 036-150-09-00, 034-270-42-00, 036-140-41-00, and 032-450-09-00), with a total assessed value of \$712,729.00.

Staff do not have information about the Respondent’s revenues or liabilities that would further inform the Respondent’s ability to pay. Based on the information available, Staff proposes no adjustment to the Total Base Liability Amount for Violation 1.

### **Step 9. Maximum and Minimum Liability Amounts**

The Enforcement Policy requires the North Coast Water Board to consider the maximum and minimum liability amounts that may be assessed for each violation. For all violations, the applicable statute sets a maximum liability amount. For some violations, the statute also establishes a minimum liability amount. The maximum and minimum liability amounts for each violation must be determined for comparison to the liability amounts proposed.

#### **Maximum Liability Amounts**

Pursuant to Water Code section 13350, subdivision (e)(1), civil liability for this Violation may be administratively imposed by the North Coast Water Board in an amount that shall not exceed five thousand dollars (\$5,000) for each day in which the violations occur.

The Complaint alleges that the Respondent has been in violation of the Cleanup and Abatement Order since April 30, 2025. As noted in the Complaint and discussed in the Summary of Violation section above, the Prosecution Team proposes a start date of June 3, 2025 and an end date of June 8, 2025 for assessing liability for days of violation. Accordingly, the Complaint alleges 5 days of violation for the Violation. Pursuant to Water Code section 13350, the statutory maximum liability amount that can be imposed for the Violation is \$25,000.

#### **Minimum Liability Amounts**

Pursuant to Water Code section 13350 subdivision (e)(1)(B), civil liability for the Violation may be administratively imposed by the North Coast Water Board in an

amount that shall not be less than five hundred dollars (\$100) for each day the cleanup and abatement order is violated.

The Complaint alleges that the Respondent has been in violation of the Cleanup and Abatement Order since April 30, 2025. As noted in the Complaint, and discussed in the Summary of Violation section above, the Prosecution Team proposes a start date of June 3, 2025 and an end date of June 8, 2025 for assessing liability for days of violation. Accordingly, the Complaint alleges 5 days of violation for the Violation. Pursuant to Water Code section 13350, subdivision (e)(1)(B), the statutory minimum liability amount that can be imposed for the Violation is \$500.

**Step 10. Final Liability Amount:**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. In consideration of the maximum liability amount determined under Step 9, the adjusted Total Base Liability Amount for the Violation is **\$25,000**, which is the statutory maximum amount.